

Kristen Monsell (CA Bar No. 304793)
Email: kmonsell@biologicaldiversity.org
Miyoko Sakashita (CA Bar No. 239639)
Email: miyoko@biologicaldiversity.org
Julie Teel Simmonds (CA Bar No. 208282)
Email: jteelsimmonds@biologicaldiversity.org
Center for Biological Diversity
2100 Franklin Street, Suite 375
Oakland, CA 94612
Phone: (510) 844-7137
Facsimile: (510) 844-7150

*Attorneys for Plaintiffs Center for Biological
Diversity and Wishtoyo Foundation*

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

CENTER FOR BIOLOGICAL
DIVERSITY, et al.,

Plaintiffs,

v.

DOUG BURGUM, et al.,

Defendants,

and

SABLE OFFSHORE CORP.,

Intervenor-Defendant.

Case No. 2:24-cv-05459-MWC-MAA

**PLAINTIFFS' OPPOSITION
TO CROSS-MOTIONS FOR
SUMMARY JUDGMENT AND
REPLY IN SUPPORT OF
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

Hearing Date: July 11, 2025

Hearing Time: 1:30 p.m.

Location: Courtroom 6A

Judge: Hon. Michelle Williams Court

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
INTRODUCTION	1
ARGUMENT	2
I. Plaintiffs’ Claims Are Not Moot Because Effective Relief Remains Available	2
A. BSEE Has a Heavy Burden to Demonstrate Mootness	3
B. BSEE’s Post-Hoc Decisions Do Not Moot Any of Plaintiffs’ Claims	4
C. Completion of Work Under the APMs Does Not Moot Plaintiffs’ Third Claim.....	9
II. BSEE’s Issuance of the Lease Extensions Is Reviewable and Unlawful	10
III. BSEE’s Issuance of the APMs Is Unlawful.....	16
IV. BSEE’s Reliance on Decades-Old NEPA Analyses Is Unlawful.....	20
V. The Court Should Issue Declaratory Relief and Vacate BSEE’s Decisions.....	22
CONCLUSION.....	24
CERTIFICATE OF COMPLIANCE.....	26

TABLE OF AUTHORITIES

Cases

<i>Am. Rivers v. Nat'l Marine Fisheries Serv.</i> , 126 F.3d 1118 (9th Cir. 1997)	8
<i>Beno v. Shala</i> , 30 F.3d 1057 (9th Cir. 1994)	12
<i>Bundorf v. Jewell</i> , 142 F. Supp. 3d 1138 (D. Nev. 2015).....	22
<i>Calderon v. Moore</i> , 518 U.S. 149 (1996).....	3
<i>California v. Watt</i> , 683 F.2d 1253 (9th Cir. 1982)	12
<i>Cantrell v. City of Long Beach</i> , 241 F.3d 674 (9th Cir. 2001)	3, 10
<i>Cape Cod Hosp. v. Sebelius</i> , 630 F.3d 203 (D.C. Cir. 2011).....	4
<i>Chafin v. Chafin</i> , 568 U.S. 165 (2013).....	3
<i>Chairez v. Mayorkas</i> , 734 F. Supp. 3d 1093 (D. Idaho 2024)	13
<i>Citizens for Better Forestry v. U.S. Dep't of Agric.</i> , 481 F. Supp. 2d 1059 (N.D. Cal. 2007).....	18
<i>Citizens to Pres. Overton Park, Inc. v. Volpe</i> , 401 U.S. 402 (1971).....	11
<i>Conner v. Burford</i> , 848 F.2d 1441 (9th Cir. 1988)	3
<i>Ctr. for Biological Diversity v. Bureau of Land Mgmt.</i> , 698 F.3d 1101 (9th Cir. 2012)	15

1	<i>Ctr. for Biological Diversity v. Lohn,</i>	
2	511 F.3d 960 (9th Cir. 2007)	8
3	<i>Ctr. for Biological Diversity v. Salazar,</i>	
4	706 F.3d 1085 (9th Cir. 2013)	21
5	<i>Dep’t of Com. v. New York,</i>	
6	588 U.S. 752 (2019).....	12
7	<i>Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.,</i>	
8	591 U.S. 1 (2020).....	7, 13
9	<i>Desert Citizens Against Pollution v. Bisson,</i>	
10	231 F.3d 1172 (9th Cir. 2000)	24
11	<i>Diné Citizens Against Ruining Our Env’t v. Jewell,</i>	
12	312 F. Supp. 3d 1031 (D.N.M. 2018).....	10
13	<i>Dubbs v. CIA,</i>	
14	769 F. Supp. 1113 (N.D. Cal. 1990).....	14
15	<i>Env’t Def. Ctr. v. Bureau of Ocean Energy Mgmt.,</i>	
16	36 F.4th 850 (9th Cir. 2022)	4, 9, 20, 21
17	<i>Forest Guardians v. Johanns,</i>	
18	450 F.3d 455 (9th Cir. 2006)	3, 8, 9
19	<i>Forsyth County v. U.S. Army Corps of Eng’rs,</i>	
20	633 F.3d 1032 (11th Cir. 2011)	14
21	<i>Friends of the Inyo v. U.S. Forest Serv.,</i>	
22	103 F.4th 543 (9th Cir. 2024)	18
23	<i>Gen. Chem. Corp. v. United States,</i>	
24	817 F.2d 844 (D.C. Cir. 1987).....	16
25	<i>Heckler v. Chaney,</i>	
26	470 U.S. 821 (1985).....	13
27	<i>Keating v. FAA,</i>	
28	610 F.2d 611 (9th Cir. 1979)	11

1	<i>Lands Council v. Powell,</i>	
2	395 F.3d 1019 (9th Cir. 2005)	21
3	<i>Mach Mining, LLC v. EEOC,</i>	
4	575 U.S. 480 (2015).....	11
5	<i>Marsh v. Or. Nat. Res. Council,</i>	
6	490 U.S. 360 (1989).....	2
7	<i>Massachusetts v. Andrus,</i>	
8	594 F.2d 872 (1st Cir. 1979).....	12
9	<i>Massachusetts v. Clark,</i>	
10	594 F. Supp. 1373 (D. Mass. 1984).....	12
11	<i>Metcalf v. Daley,</i>	
12	214 F.3d 1135 (9th Cir. 2000)	passim
13	<i>Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.,</i>	
14	463 U.S. 29 (1983).....	15
15	<i>Muckleshoot Indian Tribe v. U.S. Forest Serv.,</i>	
16	177 F.3d 800 (9th Cir. 1999)	16
17	<i>Native Vill. of Nuiqsut v. Bureau of Land Mgmt.,</i>	
18	9 F.4th 1201 (9th Cir. 2021)	7, 10
19	<i>Neighbors of Cuddy Mtn. v. Alexander,</i>	
20	303 F.3d 1059 (9th Cir. 2002)	9, 10
21	<i>No. Plains Res. Council, Inc. v. Surface Transp. Bd.,</i>	
22	668 F.3d 1067 (9th Cir. 2011)	21
23	<i>Oglala Sioux Tribe v. U.S. Nuclear Reg. Comm’n,</i>	
24	896 F.3d 520 (D.C. Cir. 2018).....	23
25	<i>Or. Nat. Desert Ass’n v. Freeborn,</i>	
26	458 F. App’x 605 (9th Cir. 2011)	6
27	<i>Or. Nat. Res. Council v. Bureau of Land Mgmt.,</i>	
28	470 F.3d 818 (9th Cir. 2006)	10

1	<i>Pac. Nw. Generating Co-op v. Bonneville Power Admin.,</i>	
2	596 F.3d 1065 (9th Cir. 2020)	11
3	<i>Perez v. Wolf,</i>	
4	943 F.3d 853 (9th Cir. 2019)	11
5	<i>Pit River Tribe v. U.S. Forest Serv.,</i>	
6	469 F.3d 768 (9th Cir. 2006)	passim
7	<i>Pollinator Stewardship Council v. U.S. EPA,</i>	
8	806 F.3d 520 (9th Cir. 2015)	23
9	<i>Poursina v. U.S. Citizenship & Immigr. Servs.,</i>	
10	936 F.3d 868 (9th Cir. 2019)	13
11	<i>Prutehi Litekyan: Save Ritidian v. U.S. Dep’t of Airforce,</i>	
12	128 F.4th 1089 (9th Cir. 2025)	4
13	<i>Robertson v. Methow Valley Citizens Council,</i>	
14	490 U.S. 332 (1989).....	2
15	<i>San Luis Obispo Mothers for Peace v. U.S. Nuclear Regul. Comm’n,</i>	
16	100 F.4th 1039 (9th Cir. 2024)	18, 19
17	<i>Seven Cnty. Infrastructure Coal. v. Eagle County,</i>	
18	No. 23-975, 2025 WL 1520964 (U.S. May 29, 2025).....	20, 24
19	<i>Shaughnessy v. Pedreiro,</i>	
20	349 U.S. 48 (1955).....	11
21	<i>Sierra Club v. Bosworth,</i>	
22	465 F. Supp. 2d 931 (N.D. Cal. 2006).....	22
23	<i>Texaco, Inc. v. Udall,</i>	
24	295 F. Supp. 1297 (D.D.C. 1969).....	12
25	<i>Tribal Vill. of Akutan v. Hodel,</i>	
26	869 F.2d 1185 (9th Cir. 1988)	12
27	<i>Trout Unlimited v. Pirzadeh,</i>	
28	1 F.4th 738 (9th Cir. 2021)	12

1	<i>U.S. Parole Comm’n v. Geraghty</i> ,	
2	445 U.S. 388 (1980).....	6
3	<i>Upper Snake River Chapter of Trout Unlimited v. Hodel</i> ,	
4	921 F.2d 232 (9th Cir. 1990)	18
5	<i>Webster v. Doe</i> ,	
6	486 U.S. 592 (1988).....	14
7	<i>West v. Sec’y of Dep’t of Transp.</i> ,	
8	206 F.3d 920 (9th Cir. 2000)	10, 17, 18
9	<i>Weyerhaeuser Co. v. U.S. Fish & Wildlife Serv.</i> ,	
10	586 U.S. 9 (2018).....	11, 14
11	Statutes	
12	42 U.S.C. § 4331	2
13	42 U.S.C. § 4336b.....	20
14	43 U.S.C. § 1332(3)	13
15	43 U.S.C. § 1334(a)	22
16	43 U.S.C. § 1334(a)(1)–(2)	12, 22
17	43 U.S.C. § 1802(2)	13
18		
19	Regulations	
20	30 C.F.R. § 250.180(e).....	12
21		
22	Federal Register Notices	
23	62 Fed. Reg. 43,937 (Aug. 18, 1997).....	19
24	74 Fed. Reg. 1937 (Jan. 14, 2009)	19
25	81 Fed. Reg. 62,259 (Sept. 8, 2016)	19
26		
27		
28		

90 Fed. Reg. 10,610 (Feb. 25, 2025)2

Other Authorities

U.S. Dep’t of the Interior, Departmental Manual, 516 DM § 15.4(C)(12)17

INTRODUCTION

Plaintiffs’ opening brief explained how Federal Defendants the Bureau of Safety and Environmental Enforcement et al. (collectively, BSEE) violated the Outer Continental Shelf Lands Act (OCSLA), National Environmental Policy Act (NEPA), and Administrative Procedure Act in authorizing lease extensions and drilling permits that enable a restart of offshore oil and gas production at the Santa Ynez Unit following one of the largest oil spills in California’s history. *See generally* Pls.’ Mem. Supp. Summ. J., Dkt. No. 68. Rather than rebutting these claims, BSEE and Sable Offshore Corp. (Sable) primarily argue that BSEE’s revised lease extensions decision and new environmental assessment (EA) and finding of no significant impact (FONSI)—issued long after the agency actions at issue and just days before their opposition briefs were due—moot Plaintiffs’ claims. BSEE and Sable are incorrect.

Effective relief remains available for all of Plaintiffs’ claims. BSEE’s 2025 lease extensions decision cannot supersede its 2023 decision because harmful effects of that unlawful decision remain. Indeed, Sable was only able to obtain drilling permits and restart one of its three platforms in the Santa Ynez Unit because of the 2023 lease extension challenged in this case. Moreover, the Ninth Circuit has “repeatedly held that dilatory or ex post facto environmental review cannot cure an initial failure to undertake environmental review.” *Pit River Tribe v. U.S. Forest Serv.*, 469 F.3d 768, 785–87 (9th Cir. 2006). In such situations, the proper course of action is not to dismiss the case as moot, but to declare the underlying actions unlawful, vacate those actions, and order the agency to complete a new analysis pursuant to the proper procedures. *See Metcalf v. Daley*, 214 F.3d 1135, 1146 (9th Cir. 2000). This is the only way to effectuate the purposes of NEPA and ensure it “will not be used to rationalize or justify decisions already made.” *Pit River Tribe*, 469 F.3d at 785–86 (citations omitted).

BSEE’s additional attempt to evade review of its lease extensions decision by arguing its National Interest Determination is unreviewable flies in the face of Ninth Circuit case law, standards articulated in OCSLA, and the agency’s own actions in this

1 case. BSEE and Sable’s various attempts to defend the agency’s decisions on the merits
2 likewise fail. After Plaintiffs filed this case, BSEE moved for voluntary remand of its
3 decisions underlying Plaintiffs’ first two claims for relief, identifying substantial
4 deficiencies in its decisionmaking. BSEE cannot now legitimately claim those decisions
5 were reasonable. Finally, BSEE and Sable’s insistence that BSEE did nothing wrong in
6 relying on a categorical exclusion and decades-old NEPA analyses to issue Sable’s
7 drilling permits fails to recognize the uniqueness of the agency’s decisions, as well as a
8 slew of new information demonstrating the risks of restarting long-dormant oil and gas
9 production at the Santa Ynez Unit off California.

10 ARGUMENT

11 I. Plaintiffs’ Claims Are Not Moot Because Effective Relief Remains Available

12 BSEE and Sable have not satisfied their heavy burden of demonstrating that
13 Plaintiffs’ case is moot. Preparing a NEPA analysis and new lease extensions decision
14 long *after* BSEE issued its original decision to grant the lease extensions and *after* its
15 decision to issue Sable drilling permits (known as Application for Permits to Modify, or
16 APMs) violates “NEPA’s timing requirements” and “seriously impeded the degree to
17 which [BSEE’s] planning and decisions could reflect environmental values.” *Pit River*
18 *Tribe*, 469 F.3d at 785–86 (citation omitted) (cleaned up).¹ And harmful effects of

19 ¹ It is irrelevant that *Pit River Tribe* and the cases cited therein relied (in part) on the
20 now-repealed Council on Environmental Quality’s NEPA regulations. *See* 90 Fed. Reg.
21 10,610–16 (Feb. 25, 2025). The Ninth Circuit’s holdings in these decisions reflect
22 NEPA’s core principles—that agencies look before leaping and involve the public in the
23 decisionmaking process so that their decisions can consider and incorporate
24 environmental concerns. *See, e.g., Marsh v. Or. Nat. Res. Council*, 490 U.S. 360, 371
25 (1989) (“NEPA promotes its sweeping commitment to ‘prevent or eliminate damage to
26 the environment and biosphere’ by focusing Government and public attention on the
27 environmental effects of proposed agency action. By so focusing agency attention,
28 NEPA ensures that the agency will not act on incomplete information, only to regret its
decision after it is too late to correct.” (quoting 42 U.S.C. § 4321)); *see also Robertson*
v. Methow Valley Citizens Council, 490 U.S. 332, 349 (1989) (“NEPA ensures that
important effects will not be overlooked or underestimated only to be discovered after
resources have been committed or the die otherwise cast.”).

1 BSEE’s 2023 lease extensions remain. As such, effective relief is available in the form
2 of declaratory relief, vacatur, and an order that BSEE complete new decisions under
3 circumstances that provide for objective evaluations.

4 A. BSEE Has a Heavy Burden to Demonstrate Mootness

5 As the Supreme Court has explained, “a case ‘becomes moot only when it is
6 *impossible* for a court to grant *any* effectual relief whatever to the prevailing party.’”
7 *Chafin v. Chafin*, 568 U.S. 165, 172 (2013) (emphases added) (citations omitted). “As
8 long as the parties have a concrete interest, however small, in the outcome of the
9 litigation, the case is not moot.” *Id.* (citation omitted); *see also Calderon v. Moore*, 518
10 U.S. 149, 150 (1996) (if there exists a “partial remedy” that the court can grant—even if
11 it is one that is not “fully satisfactory”—the court cannot dismiss a case on mootness
12 grounds (citation omitted)). “The party asserting mootness bears the burden of
13 establishing that there is no effective relief that the court can provide.” *Forest*
14 *Guardians v. Johanns*, 450 F.3d 455, 461 (9th Cir. 2006). And that burden is a “heavy”
15 one. *Id.* (citation omitted).

16 “[D]efendants in NEPA cases face a particularly heavy burden in establishing
17 mootness.” *Cantrell v. City of Long Beach*, 241 F.3d 674, 678 (9th Cir. 2001). This is
18 because “if the completion of the action challenged under NEPA is sufficient to render
19 the case nonjusticiable, entities ‘could merely ignore the requirements of NEPA, build
20 its structures before a case gets to court, and then hide behind the mootness doctrine.’”
21 *Id.* (citation omitted). For similar reasons, a post-hoc NEPA analysis does not moot the
22 failure to conduct a NEPA analysis prior to issuing an agency action that constitutes an
23 irreversible commitment of resources. *Metcalf*, 214 F.3d at 1145. Any other rule would
24 “subvert[] NEPA’s goal of insuring that federal agencies infuse in project planning a
25 thorough consideration of environmental values.” *Conner v. Burford*, 848 F.2d 1441,
26 1451 (9th Cir. 1988).

1 B. BSEE’s Post-Hoc Decisions Do Not Moot Any of Plaintiffs’ Claims

2 Neither BSEE’s post-hoc NEPA analysis nor its new lease extensions decision
3 moot Plaintiffs’ claims. This is because a “NEPA review cannot be used ‘as a subterfuge
4 designed to rationalize a decision already made.’” *Env’tl Def. Ctr. v. Bureau of Ocean*
5 *Energy Mgmt.*, 36 F.4th 850, 882 (9th Cir. 2022) (citation omitted). Rather, NEPA’s
6 “critical” timing requirement mandates that agencies “take a ‘hard look’ at
7 environmental impacts *before* taking action.” *Prutehi Litekyan: Save Ritidian v. U.S.*
8 *Dep’t of Airforce*, 128 F.4th 1089, 1101 (9th Cir. 2025) (citation omitted) (cleaned up).

9 Here, BSEE did not look before leaping. As such, the 2025 lease extensions
10 cannot “supersede” BSEE’s 2023 lease extensions, *contra* BSEE Mem. Supp. Summ. J.,
11 Dkt. No. 75 at 9–10—particularly where BSEE took subsequent action in reliance on
12 that 2023 decision by issuing the APMs and allowing production to restart, *see Cape*
13 *Cod Hosp. v. Sebelius*, 630 F.3d 203, 210 (D.C. Cir. 2011) (holding that “a live
14 controversy remain[ed] regarding the [plaintiffs’] objection to [a] 2007 rule” regarding
15 Medicare payments despite a 2008 adjustment “to reverse the effect of the 2007” rule
16 because “the 2008 rule in no way compensated for any underpayments that might have
17 been made in 2007”). Nor can BSEE’s 2025 EA and FONSI cure the agency’s failure to
18 comply with NEPA in issuing the 2023 lease extensions or APMs. *Contra* Dkt. No. 75 at
19 10–11; Sable Mem. Supp. Summ. J., Dkt. No. 76-1 at 10.

20 The Ninth Circuit has held that in situations such as this—where an agency
21 ignored NEPA’s procedural requirements and completed a NEPA analysis *after* taking an
22 action that constitutes an irreversible commitment of resources—a court should declare
23 the agency’s actions unlawful, vacate those actions, and order preparation of a new
24 analysis. This effective relief therefore remains for all of Plaintiffs’ claims.

25 For example, in *Metcalf*, a federal agency entered into two written agreements
26 with the Makah Tribe to support the Tribe’s efforts to resume hunting gray whales off
27 Washington. 214 F.3d at 1137–39. The agency prepared an EA and FONSI under NEPA,
28 but not until over a year after entering into the second agreement with the Tribe. *Id.* at

1 1142–43. The plaintiffs sued upon the agency’s issuance of the FONSI, alleging that the
2 agency violated NEPA by “prepar[ing] the EA too late in the process.” *Id.* The Ninth
3 Circuit agreed, holding the agency’s approach unlawful because “[b]y the time [the
4 agency] completed the final EA ... , the die already had been cast” precluding it from
5 taking the true “hard look” that NEPA demands. *Id.* at 1144–45; *see also id.* at 1145
6 (“NEPA’s effectiveness depends entirely on involving environmental considerations in
7 the initial decisionmaking process.”).

8 The court then ordered a remedy that it believed would “ensure that the law is
9 respected” and that the agency’s analysis would be “done under circumstances that
10 ensure an objective evaluation”—vacating the FONSI, suspending implementation of
11 the agency’s agreements with the Tribe, and requiring a new NEPA analysis. *Id.* at 1146.
12 In doing so, the Ninth Circuit rejected the defendants’ arguments that the case was moot,
13 concluding “the EA [was] demonstrably suspect because the process under which the
14 EA was prepared was fatally defective.” *Id.*

15 Similarly, in *Pit River Tribe*, the Ninth Circuit held that a federal agency violated
16 NEPA by failing to conduct environmental review before issuing lease extensions for
17 the development of geothermal steam on public lands in California. 469 F.3d at 772. The
18 agency issued the leases in 1988, which provided an initial term of ten years, relying on
19 prior NEPA analyses for geothermal development in the area prepared in the 1970s and
20 80s. *Id.* at 775–76. In 1995, the company submitted a proposal to build and operate a
21 power plant, and the agency issued a final environmental impact statement (EIS) on the
22 power plant project in 1998. *Id.* at 776–77. The agency also issued a separate decision in
23 1998 to extend the leases for another five years without conducting any additional
24 environmental review; and in 2002, extended them for another 40 years, also without
25 conducting any additional environmental review. *Id.* at 777–78.

26 The plaintiffs filed suit, challenging, *inter alia*, the agency’s failure to conduct
27 any NEPA analysis on the 1998 lease extensions, and the defendant-intervenor argued
28 that the court lacked jurisdiction because the 2002 lease extensions “supplanted” the

1 1998 extensions. *Id.* at 779. The court rejected this argument, holding that if the court
2 ruled the agency failed to follow the proper procedure, it could “invalidate the leases as
3 of 1998, thus nullifying the 2002 extensions,” and redressing the plaintiff’s procedural
4 injury. *Id.* The court also held that the 1998 EIS could not substitute for the agency’s
5 failure to conduct a NEPA analysis prior to issuing the lease extensions because “[b]y
6 the time the agencies completed the 1998 EIS, ... the point of commitment to th[e]
7 proposal—the extension of the leases—clearly had come and gone.” *Id.* at 784–87
8 (citation omitted) (cleaned up).² The Court then held that both extensions—along with
9 “the rest of the project approval process” that was “premised on the [company’s]
10 possession of a valid right to develop the land”—violated NEPA and should be vacated.
11 *Id.* at 787–88; *see also Or. Nat. Desert Ass’n v. Freeborn*, 458 F. App’x 605, 606 (9th
12 Cir. 2011) (holding NEPA challenge to an agency’s March 2010 decisions to authorize
13 grazing activity not mooted by subsequent December 2010 decisions because if the
14 agency “violated NEPA when it made the March 2010 decisions ... , the district court
15 could end such authorization and thereby halt any grazing”).

16 The same is true here. BSEE’s new EA and FONSI—prepared 1.5 years after the
17 agency granted the original lease extensions and 8 months after it issued the APMs—
18 cannot save its failure to conduct a NEPA analysis before issuing those decisions. As
19 with the agency actions in *Metcalf* and *Pit River Tribe*, BSEE improperly “made an
20 ‘irreversible and irretrievable commitment of resources’—i.e., by [approving the lease
21 extensions and APMs] before [BSEE] considered [their] environmental consequences
22 and prepared the EA.” *Metcalf*, 214 F.3d at 1145.

23
24 ² While the court was analyzing whether it could redress the plaintiff’s claims in light of
25 the 1998 EIS, and thus whether the plaintiff had standing and not whether its claim was
26 moot, the decision applies here given the similarity of the standing and mootness
27 inquiries. *See U.S. Parole Comm’n v. Geraghty*, 445 U.S. 388, 397 (1980) (“[M]ootness
28 [is] ‘the doctrine of standing set in a time frame: The requisite personal interest that
must exist at the commencement of the litigation (standing) must continue throughout
its existence (mootness).’” (citation omitted)).

1 That BSEE issued a new lease extensions decision after completing the EA and
2 FONSI is immaterial. BSEE's 2025 lease extensions decision cannot supersede its
3 unlawful 2023 decision because the harms of the 2023 lease extensions remain. Without
4 BSEE's issuance of those extensions, Sable would not have the right to develop the
5 Santa Ynez Unit, would not have been able to obtain the APMs, and would not have
6 been able to restart one of its three platforms. *See Pit River Tribe*, 469 F.3d at 784; *see*
7 *also* Dkt. No. 76-1 at 7 (Sable's claims that its leases are now maintained under the
8 APMs and by the resumption of production at Platform Harmony to storage tanks at Las
9 Flores Canyon).

10 This situation is therefore unlike the cases on which BSEE and Sable rely, where
11 an agency's issuance of a new decision during the pendency of a lawsuit completely
12 eradicated Plaintiffs' injuries stemming from the agency's old decision. *See* Dkt. No. 75
13 at 9–11; Dkt. No. 76-1 at 9–10. Declaring BSEE's actions unlawful and vacating the
14 2023 lease extensions decision and the subsequent actions BSEE took in reliance on
15 those extensions, i.e., issuing of the APMs, would mean Sable would need to suspend
16 production at Platform Harmony and cannot restart its other two platforms unless and
17 until BSEE completes new analyses following the proper procedures, giving Plaintiffs
18 effective relief. The agency's post-hoc analyses therefore do not moot any of Plaintiffs'
19 claims. *See Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 22
20 (2020) ("Procedural requirements ... serve[] important values of administrative law.").

21 None of the other cases on which BSEE or Sable rely dictate otherwise. For
22 example, in *Native Village of Nuiqsut v. Bureau of Land Management* (cited in Dkt. No.
23 75 at 9, 12, 14; Dkt. No. 76-1 at 11), the challenged exploratory drilling project had
24 ceased, "[n]o structures remain[ed] in the [project] area," and the oil company had
25 capped all the exploratory wells and demobilized all project equipment. *Native Vill. of*
26 *Nuiqsut*, 9 F.4th 1201, 1209 (9th Cir. 2021). The court therefore found that it could not
27 provide any effective relief to the plaintiffs because there was no ongoing activity to
28 mitigate and no way for the oil company to un-drill its capped wells. *Id.* Here, in

1 contrast, Sable is seeking to restart full production at the Santa Ynez Unit by returning
2 shut-in wells to production, has not demobilized its equipment, and its oil and gas
3 infrastructure remains in the ocean and on land. Vacating the agency's decisions would
4 ensure a full restart cannot occur unless the agency conducts the proper analyses.

5 *American Rivers v. National Marine Fisheries Service* (cited in Dkt. No. 75 at 9,
6 10) is also inapposite. There, the plaintiffs challenged a biological opinion analyzing the
7 effects of ongoing dam operations in the Columbia River on endangered and threatened
8 Snake River salmon. *Am. Rivers*, 126 F.3d 1118, 1119, 1122 (9th Cir. 1997). The agency
9 released the biological opinion at issue not because there was a new agency action
10 triggering its need, but because a court had held the prior one unlawful. *Id.* at 1122.
11 Accordingly, the plaintiffs did not seek to have any underlying agency action declared
12 unlawful or set aside—they challenged only the biological opinion itself. *See id.* at
13 1122, 1124. The issuance of a new biological opinion therefore mooted the plaintiffs'
14 case because there was no effective relief the court could issue. *See id.* at 1124. Here, in
15 contrast, Plaintiffs are challenging underlying agency actions—the lease extensions and
16 APMs—which enable a restart of oil and gas production and, in fact, allowed Sable to
17 restart one of the three platforms in the Santa Ynez Unit. Setting those decisions aside is
18 therefore effective relief that remains.

19 None of BSEE or Sable's other cited cases involved post-hoc NEPA analyses used
20 to justify a previously made decision. Moreover, in contrast to the cases BSEE and
21 Sable cite, here, the Court can provide Plaintiffs effective relief by declaring that BSEE
22 violated OCSLA, NEPA, and the Administrative Procedure Act in issuing the lease
23 extensions and violated NEPA and the Administrative Procedure Act in issuing the
24 APMs by relying on decades-old NEPA analyses. This alone shows that Plaintiffs' case
25 is not moot. *See Forest Guardians*, 450 F.3d at 462 (“[I]f a declaratory judgment would
26 ... provide effective relief the action is not moot.”). This is not a situation where
27 declaratory relief “would serve no purpose,” *Ctr. for Biological Diversity v. Lohn*, 511
28 F.3d 960, 963 (9th Cir. 2007), because of the ongoing nature of the project at issue and

1 future authorizations from BSEE, such as additional APMs, needed for operations at the
2 Santa Ynez Unit, or additional lease extensions if Sable does not restart full production
3 within a certain time. Notably, BSEE regularly issues APMs for other ongoing oil and
4 gas operations off California. *See* BSEE, Pacific Region Completed Applications for
5 Permit to Modify (APM), [https://www.bsee.gov/stats-facts/ocs-regions/pacific/pacific-](https://www.bsee.gov/stats-facts/ocs-regions/pacific/pacific-region-completed-applications-for-permit-to-modify-apm)
6 [region-completed-applications-for-permit-to-modify-apm](https://www.bsee.gov/stats-facts/ocs-regions/pacific/pacific-region-completed-applications-for-permit-to-modify-apm) (last visited June 11, 2025).

7 Moreover, BSEE’s history of violating NEPA in approving oil and gas activity at
8 the Santa Ynez Unit and elsewhere on the Pacific Outer Continental Shelf—along with
9 its continued insistence that it did nothing wrong in taking the agency actions at issue in
10 this case, Dkt. No. 75 at 19–24—show that such relief is needed. *See Env’tl Def. Ctr.*, 36
11 F.4th at 863, 882 (noting BSEE only agreed to complete a NEPA analysis on drilling
12 permits for hydraulic fracturing after being sued, and holding that BSEE’s subsequent
13 EA violated NEPA in several respects and appeared to be used “as a subterfuge designed
14 to rationalize a decision already made” (citation omitted)). Declaratory relief would
15 therefore be effective because it would “govern[] [BSEE’s] actions for the remainder of”
16 oil and gas operations at the Santa Ynez Unit and “prohibit[] [BSEE] from continuing to
17 violate the law.” *See Forest Guardians*, 450 F.3d at 462–63.

18 C. Completion of Work Under the APMs Does Not Moot Plaintiffs’
19 Third Claim

20 BSEE and Sable are also wrong in arguing that completion of work under the
21 APMs moots Plaintiffs’ third and fourth claims constitutionally or prudentially. *See*
22 *Neighbors of Cuddy Mtn. v. Alexander*, 303 F.3d 1059, 1065 (9th Cir. 2002)
23 (“[C]ompletion of activity is not the hallmark of mootness.”). While Sable has
24 completed the well perforations permitted by the APMs, Dkt. No. 76-1 at 7, it has not
25 completed oil and gas activities at the Santa Ynez Unit. As such, several forms of relief
26 remain to remedy Plaintiffs’ injuries, which stem not just from the act of perforating
27 wells, but also from the restart of and prolonged oil and gas production at the Unit.

28 For example, “if required to undertake additional environmental review” under

1 the proper procedure, BSEE “could consider alternatives to” allowing a full restart of
2 maximum production at the Santa Ynez Unit or “develop ways to mitigate” additional
3 environmental harm from continued production, such as increased inspection or
4 monitoring requirements; additional wildlife mitigation or pollution controls; only
5 allowing use of one platform; or requiring a sunset of operations by a date certain.
6 *Cantrell*, 241 F.3d at 678–79; *see also West v. Sec’y of Dep’t of Transp.*, 206 F.3d 920,
7 925–26 (9th Cir. 2000) (holding NEPA challenge to an approval of a two-stage highway
8 interchange project was not mooted by completion of the first phase because the court’s
9 “remedial powers would include remanding for additional environmental review and,
10 conceivably, ordering the interchange closed or taken down”); *Neighbors of Cuddy*
11 *Mtn.*, 303 F.3d at 1065–66 (similar); *Or. Nat. Res. Council v. Bureau of Land Mgmt.*,
12 470 F.3d 818, 821 (9th Cir. 2006) (post-logging mitigation can yield effective relief).

13 Sable’s reliance on *Native Village of Nuiqsut* is therefore misplaced. *See* Dkt. No.
14 76-1 at 11. There, the challenged oil drilling project was complete, wells had been
15 capped, and infrastructure removed, *Native Village of Nuiqsut*, 9 F.4th at 1209; here, the
16 project is ongoing. As such, this case more closely mirrors *Diné Citizens Against*
17 *Ruining Our Environment v. Jewell*, where the plaintiffs challenged the federal
18 government’s approval of drilling permits allowing hydraulic fracturing and horizontal
19 drilling without adequate NEPA review. 312 F. Supp. 3d 1031, 1088–90 (D.N.M. 2018),
20 *aff’d in part, rev’d in part on other grounds*, 923 F.3d 831 (10th Cir. 2019). There,
21 although the permittees completed the drilling, the court held that the claims were not
22 moot—except those related to permanently abandoned wells—because “increased risk
23 of environmental harm” remained from “producing wells” and “wells that are drilled but
24 not yet complete,” and a favorable ruling could still redress that harm. *Id.* at 1089. The
25 same is true here.

26 **II. BSEE’s Issuance of the Lease Extensions Is Reviewable and Unlawful**

27 BSEE’s 2023 National Interest Determination is both subject to judicial review
28 and unlawful. *Contra* Dkt. No. 75 at 15–18. BSEE and Sable’s contrary arguments fall

1 short—particularly since BSEE has repeatedly acknowledged the inadequacy of its
2 decision. BSEE Mot. Vol. Remand, Dkt. No. 37; Hesson Decl., Dkt. No. 37-1 ¶ 10; *see*
3 *also* Kurtz Decl. Ex. 4, Dkt. No. 75-5 at 1 (BSEE Decision Letter) (acknowledging that
4 BSEE did not consider relevant information). Moreover, BSEE only raised its
5 reviewability argument after the Court denied BSEE’s voluntary remand motion.

6 Agency actions are presumptively reviewable. *Weyerhaeuser Co. v. U.S. Fish &*
7 *Wildlife Serv.*, 586 U.S. 9, 22–23 (2018); *see also Mach Mining, LLC v. EEOC*, 575
8 U.S. 480, 495 (2015) (“Judicial review of administrative action is the norm in our legal
9 system.”). Indeed, the Supreme Court has long emphasized that the Administrative
10 Procedure Act’s judicial review provision is “generous” and its “purpose was to remove
11 obstacles to judicial review of agency action under subsequently enacted statutes.”
12 *Shaughnessy v. Pedreiro*, 349 U.S. 48, 51 (1955). Accordingly, the exception for judicial
13 review of actions “committed to agency discretion ... is a very narrow exception” that
14 applies only “in those rare instances ... where ... there is no law to apply,” *Citizens to*
15 *Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 410 (1971) (citations omitted) (cleaned
16 up), i.e., “where ‘the statute is drawn so that a court would have no meaningful standard
17 against which to judge the agency’s exercise of discretion,’” *Perez v. Wolf*, 943 F.3d 853,
18 861 (9th Cir. 2019) (citation omitted).

19 Consistent with these directives, the Ninth Circuit has held that when the sole
20 standard is whether an action is “in the public interest”—a standard strikingly similar to
21 “the national interest” one at issue—that action is not committed to agency discretion,
22 as this standard provides sufficient law for judicial review. *Keating v. FAA*, 610 F.2d
23 611, 612 (9th Cir. 1979); *see also Pac. Nw. Generating Co-op v. Bonneville Power*
24 *Admin.*, 596 F.3d 1065, 1077 (9th Cir. 2020) (holding the court could review “whether
25 an action is ‘consistent with sound business principles’” and noting that the Ninth
26 Circuit has held it can review agency decisions involving “whether a particular act was
27 ‘feasible’ or ‘just and reasonable’” (citations omitted)). Moreover, the Ninth Circuit and
28 other courts have regularly reviewed the reasonableness of the Department of the

1 Interior’s (Interior) determination that a particular action taken under OCSLA was in the
2 “national interest.” *See e.g., Tribal Vill. of Akutan v. Hodel*, 869 F.2d 1185, 1190 (9th
3 Cir. 1988); *California v. Watt*, 683 F.2d 1253, 1268–69 (9th Cir. 1982); *Massachusetts v.*
4 *Clark*, 594 F. Supp. 1373, 1387 (D. Mass. 1984).

5 This case is no different. This Court can review BSEE’s decision because there is
6 law to apply: BSEE may only approve a lease extension that is “in the National interest,
7 and ... conserves resources, prevents waste, or protects correlative rights.” 30 C.F.R.
8 § 250.180(e). These are not unbounded policy judgments but concrete, reviewable
9 criteria. Moreover, the provision in OCSLA directing the agency to prescribe leasing
10 regulations—including those for lease extensions—requires a balance between
11 facilitating proper lease development and protecting the environment from harm. 43
12 U.S.C. § 1334(a)(1)–(2); *cf. Trout Unlimited v. Pirzadeh*, 1 F.4th 738, 754 (9th Cir. 2021)
13 (stating that if a law provided an agency could act “for any reason ... then no
14 meaningful legal standard would apply”).

15 BSEE’s attempt to fault Plaintiffs for pointing to standards in the regulations,
16 other provisions of OCSLA, and the statute’s overall purposes, Dkt. No. 75 at 16–17, is
17 unavailing. Even where a statute grants an agency broad discretion, that agency’s
18 actions are reviewable when guided by meaningful standards found in the statute’s
19 framework or regulations. *See Dep’t of Com. v. New York*, 588 U.S. 752, 771–72 (2019)
20 (finding standards in other parts of the Census Act despite the Secretary’s discretion to
21 conduct the census “in such form and content as he may determine” (citation omitted));
22 *Trout Unlimited*, 1 F.4th at 757–58 (finding guidance in regulations as a whole despite
23 apparent agency discretion).³ Thus, 30 C.F.R. § 250.180(e)’s reference to “the National
24

25 ³ Courts also consider “whether the general purposes of the statute would be endangered
26 by judicial review.” *Beno v. Shala*, 30 F.3d 1057, 1066 (9th Cir. 1994) (citation
27 omitted). OCSLA’s purposes would not be endangered by judicial review, as evidenced
28 by the “complex and detailed regulations” implementing the statute, *see id.* at 1066–67,
and decades of litigation filed under the statute by states, the oil and gas industry, and

1 interest” must be read to conform to OCSLA’s mandate to balance energy development
2 with environmental protection. *See* 43 U.S.C. §§ 1332(3), 1802(2).

3 BSEE itself has acknowledged as much. BSEE’s new lease extensions decision
4 expressly admits that its National Interest Determination

5 *is guided by the Congressional purposes of the Outer Continental Shelf*
6 *Lands Act (OCSLA) and 43 U.S.C. § 1802 (2006)*, including to:

7 (1) establish policies and procedures for managing the oil and natural gas
8 resources of the OCS which are intended to result in expedited exploration
9 and development of the OCS in order to achieve national economic and
10 energy policy goals, assure national security, reduce dependence on foreign
sources, and maintain a favorable balance of payments in world trade; and,

11 (2) preserve, protect, and develop oil and natural gas resources in the OCS
12 in a manner which is consistent with the need (A) to make such resources
13 available to meet the Nation’s energy needs as rapidly as possible, (B) *to*
14 *balance orderly energy resource development with protection of the human,*
15 *marine, and coastal environments,* (C) to insure the public a fair and
equitable return on the resources of the OCS, and (D) to preserve and
maintain free enterprise competition.

16 Kurtz Decl. Ex. 4, Dkt. No. 75-5 at 7 (BSEE Decision Letter) (emphasis added). And in
17 seeking voluntary remand of its lease extensions decision, BSEE stated that the
18 “National interest factors” include “those concerns that have been raised by the
19 plaintiff[s] in this litigation.” Hesson Decl., Dkt. No. 37-1 ¶ 12. BSEE’s arguments in its
20 brief that there are no standards by which to review its 2023 National Interest
21 Determination directly contradict these acknowledgements.

22 The cases BSEE cites, Dkt. No. 75 at 15–16, fall into limited, well-established
23 categories—none of which apply here—that courts have traditionally found to be
24 “committed to agency discretion.” *See Dep’t of Homeland Sec.*, 591 U.S. at 17. These
25 categories include non-enforcement decisions, *Heckler v. Chaney*, 470 U.S. 821 (1985);
26 immigration cases where Congress explicitly stripped courts of jurisdiction to review

27 _____
28 conservation organizations alike, *see, e.g. Texaco, Inc. v. Udall*, 295 F. Supp. 1297
(D.D.C. 1969); *Massachusetts v. Andrus*, 594 F.2d 872 (1st Cir. 1979).

1 national-interest waivers, *Poursina v. U.S. Citizenship & Immigr. Servs.*, 936 F.3d 868
2 (9th Cir. 2019); *Chairez v. Mayorkas*, 734 F. Supp. 3d 1093 (D. Idaho 2024); and
3 national security decisions like Central Intelligence Agency employment and security
4 clearances, *Webster v. Doe*, 486 U.S. 592 (1988); *Dubbs v. CIA*, 769 F. Supp. 1113 (N.D.
5 Cal. 1990). Extending an offshore oil and gas lease is not the type of decision that is
6 traditionally unreviewable. *See Weyerhaeuser*, 586 U.S. at 23–25 (rejecting agency’s
7 position that its decision was committed to its discretion where the “case involve[d] the
8 sort of routine dispute that federal courts regularly review: An agency issues an order
9 affecting the rights of a private party, and the private party objects that the agency did
10 not properly justify its determination under a standard set forth in the statute”).

11 *Forsyth County v. U.S. Army Corps of Engineers* is likewise inapplicable. 633
12 F.3d 1032 (11th Cir. 2011). That case involved a law allowing the Corps to lease land
13 but requiring it to give a preference to local governments in doing so. *Id.* at 1035. A
14 county sued the Corps after it leased land to a nonprofit organization, claiming the
15 Corps failed to properly consider the preference. *Id.* at 1040. The Eleventh Circuit held
16 the decision unreviewable because the Corps considered the preference but decided
17 other statutory factors outweighed it, and the law did not specify which criteria were
18 paramount or how the agency should weigh the enumerated factors. *Id.* at 1041; *see also*
19 *id.* at 1042 (noting that the plaintiff “asked the district court to second guess the weight
20 accorded th[e] preference amidst a host of other factors” the agency considered). Here,
21 in contrast, Plaintiffs have not challenged how BSEE chose to weigh relevant factors,
22 but rather BSEE’s complete omission of relevant considerations in its decision, a classic
23 APA claim that is squarely within the domain of reviewable agency action. *See*
24 *Weyerhaeuser*, 586 U.S. at 24–25 (holding that where a statute grants an agency
25 discretion to exclude land from a critical habitat designation, the agency’s decision is
26 reviewable because the statute provided meaningful standards, such as economic and
27 conservation impacts, to guide that discretion).

28 BSEE and Sable’s argument that the agency’s 2023 National Interest

Determination was not arbitrary also fails. BSEE already admitted “deficiencies” with its decision that “impact[ed] the sufficiency and completeness” of its review. Hesson Decl., Dkt. No. 37-1 ¶ 8. It should therefore be undisputed that BSEE’s decision was “over broad and conclusory,” lacking any analysis of “how granting the extension outweighs any risks to the national interest.” *Id.* ¶ 10.

BSEE cannot hide behind its “discretion” in evaluating whether a lease extension is in the national interest, *see* Dkt. No. 75 at 18, to claim a decision it previously admitted was flawed is now somehow reasonable. An agency’s exercise of its discretion can still be unlawful, where, for example, it entirely failed to consider an important aspect of the problem. *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). That is just what happened here. *See* Dkt. No. 68 at 9–11 (explaining how BSEE failed to consider, *inter alia*, how greenhouse gas pollution from restarting oil and gas production poses a risk to the national interest given record evidence showing that climate change is a growing threat to national security). Contrary to BSEE’s characterizations, the factors it failed to consider are not peripheral concerns; they go to the core of what constitutes the “national interest” under OCSLA.

BSEE’s claim that the harms from the lease extensions are not relevant factors because they are not expressly enumerated in OCSLA or its implementing regulations, Dkt. No. 75 at 18, fails. In evaluating whether an agency failed to consider relevant factors, courts look to what the underlying statute makes important, Dkt. No. 68 at 10, as well as scientific studies and other information in the administrative record. *See Ctr. for Biological Diversity v. Bureau of Land Mgmt.*, 698 F.3d 1101, 1122–23 (9th Cir. 2012). Here, both OCSLA and the administrative record show that the environmental harms from extending the leases in the Santa Ynez Unit are relevant factors for BSEE’s National Interest Determination. *See* Dkt. No. 68 at 9–11.

Indeed, BSEE recognized that environmental impacts are a relevant consideration in making its National Interest Determination. *Id.* at 9–10 (citing AR_0000424). The problem for the agency is that it then failed to consider any adverse environmental

1 harms, focusing instead only on the purported benefits and rendering its decision the
2 epitome of arbitrary decisionmaking.

3 In addition to issuing an arbitrary decision under OCSLA, BSEE's NEPA
4 categorical exclusion review on issuing the lease extensions is also unlawful. Dkt. No.
5 68 at 11–14. BSEE has little to say in defense of its categorical exclusion review,
6 instead claiming only that it was reasonable for the agency to assume operations would
7 remain shut down given the representations ExxonMobil (the prior owner of the Santa
8 Ynez Unit) made in its application for the lease extensions. Dkt. No. 75 at 19.

9 Regardless of what the applicant said, it is BSEE's job to examine the relevant
10 factors and reach a reasonable decision in light of the available information. Deferring
11 to the project proponent does not fulfill the agency's legal obligation—particularly
12 when this deference led to a categorical exclusion based on an assumption that
13 operations would remain shut down, while the lease extensions decision simultaneously
14 assumed full production, without any explanation for this inconsistency. Dkt. No. 68 at
15 12–13; *see also Gen. Chem. Corp. v. United States*, 817 F.2d 844, 846 (D.C. Cir. 1987)
16 (holding agency action arbitrary and capricious where the agency's analysis was
17 “internally inconsistent and inadequately explained”); *Muckleshoot Indian Tribe v. U.S.*
18 *Forest Serv.*, 177 F.3d 800, 814 (9th Cir. 1999) (noting how the court was “troubled by
19 [the agency's] selective willingness to rely upon the availability of funding sources
20 beyond the Forest Service's direct control” for preferred alternative while rejecting
21 other alternatives because of uncertain funding).⁴

22 **III. BSEE's Issuance of the APMs Is Unlawful**

23 BSEE's reliance on a categorical exclusion to approve the APMs at issue in this
24 case was arbitrary. Dkt. No. 68 at 14–20. Contrary to BSEE and Sable's insistence, there
25

26 ⁴ BSEE's argument also rings hollow considering its 2025 lease extensions decision and
27 2025 EA and FONSI examine environmental harms from restarting oil and gas
28 production at the Santa Ynez Unit, despite being based on the same application from
ExxonMobil. *See* Dkt. No. 75-5 at 1.

1 is nothing “normal” about the APMs that BSEE issued to Sable here. *Contra* Dkt. No.
2 75 at 20 (citation omitted); Dkt. 76-1 at 21 (citation omitted). Nothing in the categorical
3 exclusion indicates that Interior intended it to apply to this unique situation—permits
4 that enable the resumption of production after a 10-year shutdown following a massive
5 oil spill. *See* Hesson Decl., Dkt. No. 37-1 ¶¶ 5, 13 (stating the APMs “allow for
6 increased flow and restoration of production to levels prior to the 2015 shut-in once
7 production is resumed”). Indeed, BSEE and Sable appear to disagree as to whether any
8 additional permits are needed prior to a restart—*compare id.* ¶ 14 (stating that “[i]t is
9 likely that a platform restart will require Sable to submit additional APMs to BSEE
10 involving pump changes, which are necessary to restart production and produce fluids
11 from the wellbore”), *with* Dkt. No. 76-1 at 19 (Sable claiming that it did not need APMs
12 to restart)—demonstrating the unique nature of the situation and why it was arbitrary for
13 BSEE to issue the permits without further review.

14 BSEE and Sable’s arguments that the agency’s approach was reasonable because
15 the action fits within the plain language of the categorical exclusion is inconsistent with
16 both the categorical exclusion and Ninth Circuit caselaw. The categorical exclusion
17 BSEE invoked (which is for the approval of an “Application for Permit to Drill” and
18 does not expressly apply to APMs), can only apply when “appropriate mitigation
19 measures are described in an approved ... development plan.” U.S. Dep’t of the Interior,
20 Departmental Manual, 516 DM § 15.4(C)(12). While the development plans for the
21 Santa Ynez Unit discuss routine operations, oil spills, and air pollution, Dkt. No. 76-1 at
22 19; none of them account for a restart of production after a decade-long shutdown
23 following a major spill, and years after the development plans expected production to
24 cease for good. That Sable has been conducting inspections and maintenance under
25 “Preservation Plans,” *id.* at 22, is irrelevant: such plans do not constitute development
26 plans under OCSLA. *See* 43 U.S.C. § 1351 (development plan approval process).

27 The unique circumstances of this case also show that BSEE “selected the wrong
28 path” in relying on this categorical exclusion. *West*, 206 F.3d at 929. Plaintiffs’ argument

on this issue is not “novel” as BSEE contends, Dkt. No. 75 at 20, but based on a long line of Ninth Circuit caselaw that “[t]he arbitrary and capricious standard is applied to an agency’s determination that a particular action falls within a categorical exclusion,” *Citizens for Better Forestry v. U.S. Dep’t of Agric.*, 481 F. Supp. 2d 1059, 1082 (N.D. Cal. 2007) (citations omitted) (cleaned up); *see also West*, 206 F.3d at 929 (in reviewing an agency’s invocation of a categorical exclusion, a court must determine whether the agency’s chosen “path ... was the right one in light of NEPA’s procedural requirements”); Dkt No. 68 at 14–15 (citing other cases). These cases stand for the proposition that BSEE cannot blindly apply its categorical exclusion simply because it may fit the activity on its face, but it must determine whether use of the exclusion is appropriate considering the scope of the underlying the permit facilitates.

That BSEE performed a categorical exclusion review cannot save its faulty use of the exclusion in the first place. “[T]he agency completely fail[ed] to undertake the required environmental analysis,” meaning its “conclusions about the environmental impact of the under-evaluated project are speculation.” *Friends of the Inyo v. U.S. Forest Serv.*, 103 F.4th 543, 558 (9th Cir. 2024). And that is particularly true here, where BSEE’s review failed to consider highly relevant factors and reached conclusions contrary to the evidence before the agency. Dkt. No. 68 at 16–20.

The cases on which Sable relies—where an agency took an action that simply maintained the status quo—are inapposite. *See San Luis Obispo Mothers for Peace v. U.S. Nuclear Regul. Comm’n*, 100 F.4th 1039, 1058 (9th Cir. 2024) (“[T]he Exemption did not alter the status quo at Diablo Canyon but simply allowed for a change in the schedule for submission of a renewal application.”); *Upper Snake River Chapter of Trout Unlimited v. Hodel*, 921 F.2d 232, 234–35 (9th Cir. 1990) (holding the Bureau of Reclamation did not have to prepare an EIS before adjusting water flows at a dam because the agency had been operating the dam for decades and regularly adjusted flow levels). Here, BSEE did not permit the status quo, but took action that (by its own admission) helped facilitate a return to full production after a 10-year shutdown.

1 Moreover, in *Mothers for Peace*, the plaintiffs did “not present any arguments of
2 specific safety concerns with [the project],” but instead “reference[d] [the agency’s]
3 general prior acknowledgement that operation after 40 years may present unique age-
4 degradation concerns.” 100 F.4th at 1059. This stands in stark contrast to the situation
5 here, where one massive oil spill has already occurred, AR_0016744, and the record
6 demonstrates increased risk of more spills and other accidents from reliance on aging
7 subsea pipelines and other infrastructure, AR_0001881; AR_0012989, none of which
8 BSEE considered in its categorical exclusion review, *see* AR_0000037–39, 40–42.

9 Nor did BSEE properly consider impacts to endangered species. Dkt. No. 68 at
10 18–20. BSEE points to the 1984 EIS in claiming that the agency already adequately
11 considered the effects of oil and gas activities at the Santa Ynez Unit on “marine
12 species,” Dkt. No. 75 at 22, but numerous species were not even listed under the
13 Endangered Species Act at the time of the 1984 EIS. *See, e.g.*, 81 Fed. Reg. 62,259
14 (Sept. 8, 2016) (listing the Central America distinct population segment of the
15 humpback whale as a separate species); 74 Fed. Reg. 1937 (Jan. 14, 2009) (listing black
16 abalone); 62 Fed. Reg. 43,937 (Aug. 18, 1997) (listing California steelhead). It is hard
17 to see how that analysis could have taken the requisite hard look at the impacts of
18 activities if it did not consider the vulnerable status of the species. BSEE’s claim that the
19 40-year-old EIS adequately considered emissions from oil and gas production at the
20 Santa Ynez Unit, Dkt. No. 75 at 22, similarly fails. That EIS concluded annual air
21 emissions will be insignificant because they “are small in comparison with current
22 annual omissions for Santa Barbara County.” AR_0027536. But the record shows that
23 before it shut down, the Unit was the County’s largest facility source of several
24 emissions, including greenhouse gas emissions. AR_0001809–10.

25 Sable’s reliance on a 2018 EA cannot save the agency either. BSEE did not
26 mention that analysis in its decision under review, AR_0000037–40, nor does it point to
27 it in its briefing, *see* Dkt. No. 75 at 21–24. And regardless, it cannot constitute the hard
28 look required by law given other new information demonstrates its analysis is outdated.

1 For example, the 2018 EA refers to a conclusion from the National Marine Fisheries
2 Service that oil and gas activity off California is not likely to adversely affect black
3 abalone. AR_0016083–84. But the Fisheries Service recently reached the opposite
4 finding, concluding in an updated analysis that oil and gas activity *is* likely to adversely
5 affect this species, along with the blue whale, fin whale, the Mexico and Central
6 America humpback whale distinct population segments, and the green sea turtle East
7 Pacific distinct population segment. AR_0000122–23; *see also Env't'l Def. Ctr.*, 36 F.4th
8 at 879 (recognizing the Fish and Wildlife Service's determination that "the western
9 snowy plover, the California least tern, and the southern sea otter all were likely to be
10 adversely affected by oil spills" from drilling activities off California). BSEE has never
11 considered these facts in a NEPA analysis.

12 And contrary to BSEE's characterization, this issue is not "about where to draw
13 the line" in considering indirect effects in an EIS "separate in time and place" and over
14 which BSEE has no control. Dkt. No. 75 at 22 (quoting *Seven Cnty. Infrastructure Coal.*
15 *v. Eagle County*, No. 23-975, 2025 WL 1520964, at *8 (U.S. May 29, 2025)). Rather,
16 this is about the agency's arbitrary reliance on a categorical exclusion, its failure to
17 consider the numerous direct effects of its permitting of drilling activity at the Santa
18 Ynez Unit to resume, and its failure to connect the dots between record evidence and its
19 ultimate decision—a straightforward violation of the Administrative Procedure Act.

20 **IV. BSEE's Reliance on Decades-Old NEPA Analyses Is Unlawful**

21 Plaintiffs explained how BSEE's reliance on EISs issued in the 1970s and 80s to
22 approve lease extensions in 2023 and APMs in 2024 is arbitrary given a myriad of new
23 information regarding the dangers of offshore oil and gas drilling. Dkt. No. 68 at 20–24.
24 In response, BSEE does not deny that relevant new information exists or that the agency
25 failed to consider this new information in its decision. *See* Dkt. No. 75 at 22–24.
26 Instead, BSEE claims that 42 U.S.C. § 4336b does not apply because the 1975 and 1984
27 EISs are not "programmatic" in nature and that BSEE is not engaged in an ongoing
28 major federal action. Dkt. No. 75 at 22–24. Both arguments fail.

1 First, it is irrelevant whether the underlying NEPA analyses are “programmatic.”
2 Plaintiffs cited 42 U.S.C. § 4336b to emphasize that Congress, in recently amending
3 NEPA, recognized that agencies cannot reasonably comply with NEPA by relying on
4 outdated information. The Ninth Circuit has long recognized as much. *See, e.g., No.*
5 *Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1086–87 (9th Cir. 2011)
6 (stating that “[r]eliance on data that is too stale to carry the weight assigned to it may be
7 arbitrary and capricious” and holding that the agency’s reliance “on stale data” in
8 preparing an EIS was “faulty” and “d[id] not constitute the ‘hard look’ required under
9 NEPA”); *Lands Council v. Powell*, 395 F.3d 1019, 1031 (9th Cir. 2005) (holding that
10 “the lack of up-to-date evidence on [a] relevant question prevented the [agency] from
11 making an accurate cumulative impact assessment”).

12 Second, oil and gas activity at the Santa Ynez Unit is ongoing and incomplete
13 such that there remains a major federal action to occur—as evidenced by BSEE’s
14 issuance of the lease extensions and APMs at issue. *See* Civil Minutes, Dkt. No. 46 at 8
15 (recognizing that BSEE’s issuance of APMs is indication of an “ongoing federal
16 action”). This case is therefore a far cry from *Center for Biological Diversity v. Salazar*,
17 706 F.3d 1085 (9th Cir. 2013). In that case, the court held that an agency’s approval of
18 an updated financial guarantee to cover reclamation costs of a previously approved
19 mining operation did not constitute a major federal action where all the agency did was
20 perform “ministerial tasks” of plugging data into a “software program” to calculate the
21 needed bond. *Id.* at 1095–96. It analogized such tasks to “the type of monitoring and
22 compliance activities that ... do not trigger NEPA’s requirements.” *Id.* at 1096 (citing
23 cases).

24 Here, in contrast, BSEE’s actions involved far more than ministerial tasks or
25 monitoring activities. BSEE had the discretion to deny or condition both the lease
26 extensions and the APMs, and BSEE did in fact include conditions on the lease
27 extensions. AR_0000424–25; *see also Env’t Def. Ctr.*, 36 F.4th at 864–65, 885
28 (recognizing that BSEE has the authority to deny drilling permits or restrict activities

1 under drilling permits, including for environmental protection reasons). Moreover, in
2 contrast to the cases on which BSEE and Sably rely, Interior has broad authority over
3 offshore oil and gas activity even after its initial approval, including over ongoing
4 operations, and the authority to cancel a lease upon making certain findings and
5 following certain procedures, including finding that the harms of continued production
6 outweigh any benefits. 43 U.S.C. § 1334(a), (a)(1)–(2).

7 Courts have found this level of discretion sufficient to constitute “remaining
8 federal action” giving rise to a supplemental EIS obligation. In *Sierra Club v. Bosworth*,
9 for example, because the Forest Service retained the discretion “to unilaterally terminate
10 the contract if its original environmental analysis has been altered by, for example,
11 significant new information,” the court held that the “approval of the contracts is not
12 effectively final if additional information would alter the environmental analysis.” 465
13 F. Supp. 2d 931, 939 (N.D. Cal. 2006). The court found federal action remained and
14 ordered a supplemental EIS. *Id.* at 939, 942; *see also Bundorf v. Jewell*, 142 F. Supp. 3d
15 1138, 1150–51 (D. Nev. 2015) (holding that BLM retained enough discretion in
16 finalizing an unissued right of way to constitute an ongoing major federal action, and
17 ordering federal defendants to prepare a supplemental EIS for the entire project (not
18 limited to the right of way)). The same result is compelled here.

19 **V. The Court Should Issue Declaratory Relief and Vacate BSEE’s Decisions**

20 The Court should issue declaratory relief; vacate BSEE’s lease extensions and
21 APMs; and order BSEE to complete new decisions on the blank slate the law demands.
22 The failure to comply with NEPA is a serious error of law that cannot be cured by post-
23 hoc analysis, *see supra* Section I, and any disruptive consequences of vacatur do not
24 outweigh the harm from the agency’s errors, Dkt. No. 68 at 24–25. BSEE and Sable
25 claim the agency’s errors are not serious, arguing that BSEE’s EA/FONSI and revised
26 lease extensions decision show that it would reach the same result on remand. Dkt. No.
27 75 at 24–25; Dkt. No. 76-1 at 24–25. However, Ninth Circuit caselaw shows that the
28 agency’s self-serving decisions cannot be trusted. *See, e.g., Metcalf*, 214 F.3d at 1146

1 (post-hoc NEPA taints the decisionmaking process to such an extent that it must be
2 redone); *see also Oglala Sioux Tribe v. U.S. Nuclear Reg. Comm’n*, 896 F.3d 520, 534
3 (D.C. Cir. 2018) (“If even ‘significant’ deficiencies in NEPA reviews are forgiven
4 because they are merely procedural, there will be nothing left to the protections that
5 Congress intended [NEPA] to provide.”).

6 There is no reason to have supplemental briefing on remedy. *Contra* Dkt. No. 76-
7 1 at 24. Sable points to “evolving circumstances” regarding the Santa Ynez Unit in
8 requesting such briefing, *id.*, but those are largely of Sable’s own making—including
9 the company’s choice to proceed with various activities in the coastal zone in defiance
10 of cease-and-desist orders from the California Coastal Commission, *see* Pls.’ First Am.
11 Compl. ¶ 83, Dkt No. 38-2; BSEE Vol. Remand Reply, Dkt. No. 60 at 6–7, and
12 restarting Platform Harmony while this lawsuit was pending, before BSEE completed
13 its NEPA analysis or new lease extensions decision, and despite not yet having approval
14 to restart the onshore pipeline that ruptured and spilled in 2015, *see* BSEE Notice, Dkt.
15 No. 73 at 1. As one California state agency put it, “[t]he willful disregard for the
16 directives of regulatory agencies does not engender trust or confidence in Sable’s
17 willingness to serve as a responsible partner....” Monsell Decl. Ex. 1, at 2 (filed
18 herewith). Sable’s request for additional briefing is nothing but a tactic to delay final
19 resolution of this case and meaningful relief for Plaintiffs.

20 Moreover, the disruptive consequences analysis asks whether the case is one of
21 the “limited circumstances” in which there will be harm *to the environment* from
22 vacatur. *Pollinator Stewardship Council v. U.S. EPA*, 806 F.3d 520, 532–33 (9th Cir.
23 2015). The evolving circumstances to which Sable alludes are irrelevant because vacatur
24 will not result in environmental harm no matter the circumstances on the ground.
25 Rather, vacating BSEE’s actions will ensure that no oil and gas production can occur
26 while BSEE conducts the unbiased analyses both NEPA and OCSLA demand. Any
27 economic harm to Sable from vacatur should carry little weight where Sable “acted at
28 [its own] peril,” *Desert Citizens Against Pollution v. Bisson*, 231 F.3d 1172, 1187 (9th

1 Cir. 2000), by choosing to enter a contract with ExxonMobil regarding a highly
2 contentious project that had already been the subject of several lawsuits.

3 Nothing in the Supreme Court’s recent decision in *Seven County* changes the
4 outcome here. *Contra* Dkt. No. 75 at 25; Dkt. No. 76-1 at 24. The Court’s discussion of
5 remedy for NEPA violations is consistent with the standard Plaintiffs cited in their
6 opening brief. Moreover, this is not a situation where BSEE prepared a comprehensive
7 EIS that “identified and analyzed numerous ‘significant and adverse impacts that could
8 occur’” from the underlying action (as well as “several ‘minor impacts’”) but chose not
9 to address other impacts the agency deemed “‘speculative’ and attenuated from the
10 project at hand.” *Seven Cnty.*, 2025 WL 1520964, at *4 (citations omitted). Rather, here,
11 BSEE unreasonably relied on categorical exclusions to avoid conducting an
12 environmental analysis of the challenged actions, and Plaintiffs explained how this is a
13 serious error because if BSEE had conducted its analysis pursuant to the proper
14 procedures, it could have reached a different result. *See* Dkt. No. 68 at 25. Moreover,
15 unlike in *Seven County*, where the agency “possesse[d] no regulatory authority over the”
16 impacts it chose not to consider, 2025 WL 1520964, at *11, here, BSEE has direct
17 regulatory authority over oil and gas production at the Santa Ynez Unit and the authority
18 to deny the lease extensions and APMs based on environmental (or other) concerns.

19 CONCLUSION

20 The Court should reject BSEE and Sable’s arguments, grant Plaintiffs’ motion for
21 summary judgment, declare BSEE’s actions unlawful, and vacate the agency’s
22 decisions.

23
24 Dated: June 13, 2025

Respectfully submitted,

25 /s/ Kristen Monsell

26 Kristen Monsell (CA Bar No. 304793)

27 Email: kmonsell@biologicaldiversity.org
28

/s/ Miyoko Sakashita

Miyoko Sakashita (CA Bar No. 239639)

Email: miyoko@biologicaldiversity.org

/s/ Julie Teel Simmonds

Julie Teel Simmonds (CA Bar No. 208282)

Email: jteelsimmonds@biologicaldiversity.org

Center for Biological Diversity

2100 Franklin Street, Suite 375

Oakland, CA 94612

Phone: (510) 844-7137

Facsimile: (510) 844-7150

*Attorneys for Plaintiffs Center for Biological
Diversity and Wishtoyo Foundation*

I, Kristen Monsell, attest that all other signatories listed, and on whose behalf the
filings are submitted, concur in the filings' contents and have authorized the filings.

/s/ Kristen Monsell

Kristen Monsell

CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Plaintiffs Center for Biological Diversity and Wishtoyo Foundation certifies that this brief contains 24 pages, which complies with the page limit set by the Court's Standing Order, Dkt. No. 34.

Dated: June 13, 2025

/s/ Kristen Monsell
Kristen Monsell